TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 553.

LARS THOMPSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

FILED DECEMBER 28, 1897.

(16,766.)

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a In the Supreme Court of the State of Utah.

THE STATE OF UTAH, Respondent,
v.
LARS THOMPSON, Appellant.

Transcript on Appeal to the Supreme Court of Utah.

Filed July 3rd, 1897.

L. P. PALMER,
Clerk Supreme Court of Utah.

1 In the District Court of the Second Judicial District of the Territory of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH, Plaintiff,
v.
JACK MOORE and LARS THOMPSON, Defendants.
Indictment for Grand Larceny.

Jack Moore and Lars Thompson, the said defendants, are accused by the grand jury of this court by this indictment of the crime of grand larceny, committed as follows: That the said defendants, Jack Moore and Lars Thompson, on the second day of March, eighteen hundred and ninety-five, at Wayne county, Territory of Utah, and within the jurisdiction of this court, one calf, then and there being the property of one Heber Wilson, did unlawfully and feloniously steal, take, and drive away, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the people of the Territory of Utah.

W. T. H. DOTONS,
Foreman of the Grand Jury.

JOHN W. JUDD,
United States District Attorney,
By W. M. McCARTY,
Assistant U. S. District Attorney.

Names of witnesses examined before the grand jury on finding the foregoing indictment: Heber Wilson, Alma Young, John Cattrell, Henry Thompson, J. B. Buhr.

The defendant Jack Moore, at his own request and at *at* the request of Barlow Ferguson, his attorney, came before the grand jury and made a voluntary statement.

2 In the Second Judicial District Court of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH
v.
JACK MOORE and LARS THOMPSON.
Verdict.

We, the jury empanelled in the above-entitled cause, find the defendants, Jack Moore and Lars Thompson, guilty of grand larceny,

as charged in the indictment. We recommend the defendants to the mercy of the court.

Nov. 21, 1895.

W. S. BRINKERHOFF, *Foreman.*

3 In the Second Judicial District Court of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH }
v.
JACK MOORE and LARS THOMPSON. }

Come counsel for the people, and the said defendants with their counsel. Thereupon the motion for a new trial heretofore filed herein is argued and submitted and by the court taken under advisement. Thereupon it is ordered that in the event of a new trial being granted that the said Jack Moore be admitted to bail in the sum of $750, and that the said Lars Thompson in the sum of $500, and in the event said motion for a new trial is overruled, then defendants are likewise to be admitted to bail as aforesaid pending an appeal to the supreme court.

THE PEOPLE OF THE TERRITORY OF UTAH }
v.
JACK MOORE and LARS THOMPSON. }

This cause having heretofore been argued and submitted on motion for a new trial, and the court, being now fully advised, orders that a new trial be granted herein, and it is further ordered, on application, that D. J. Frew be entered as associate counsel herein.

4 In the Fifth Judicial District Court of the State of Utah, Beaver County, February 28th, of the February Term, A. D. 1896.

Present: E. V. Higgins, judge.

In the Matter of the Transfer of the Files of the District Court Cases Now in the Custody of the District Clerk of Beaver County.

The clerk of the district court of Beaver county, Utah, is hereby authorized and directed to forthwith transfer the files of all civil and criminal causes to the several county clerks where said causes are properly triable.

5 In the District Court of the Sixth Judicial District, County of Wayne, State of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH }
v.
JACK MOORE and LARS THOMPSON. }

Order Changing Place of Trial.

Now, on this 26th day of April, 1897, the same being the regular April term of this court, sitting in the county of Wayne, State of

Utah, came the defendants, Jack Moore and Lars Thompson, and move the court for a change of the place of trial herein to some county outside of this judicial district, because the presiding judge of this district is disqualified to try the same by reason of the fact he was at the time the indictment was presented and filed herein the prosecuting attorney, who prepared the said indictment, as appears by the said indictment on file herein, and the county and prosecuting attorney consents thereto, and it appearing to the court that the said grounds are true in fact, that the law is in favor of said motion, and that the county and prosecuting attorney for this county and the said defendants all consent to the said change of trial and the making of said order—

It is therefore hereby ordered, adjudged, and decreed by the court that the said motion be, and it is hereby, granted; that the place of trial of this cause be, and is hereby, changed from this Wayne county to the county of Emery, in the State of Utah, in the 7th judicial district, to be there tried and finally disposed of, as is by law in such cases made and provided, and the clerk of this court is hereby directed, authorized, and required to forthwith prepare a certified transcript of all the docket entries made herein and forward the same at once to the clerk of the district court within and for the said county of Emery, in the State of Utah and said district, together with all the files and papers herein.

Dated this April 26, 1897.

W. M. McCARTY, *Judge.*

6 In the Seventh Judicial District Court, County of Emery, State of Utah.

THE STATE OF UTAH
v.
LARS THOMPSON, Defendant. } Verdict.

We, the jury empanneled in the above-entitled cause, find said defendant, Lars Thompson, guilty as charged in the indictment.

H. H. OVIATT, *Foreman.*

Dated Castle Dale, Utah, May 26, 1897.

7 In the District Court of the Seventh Judicial District of the State of Utah in and for the County of Emery.

THE PEOPLE OF THE TERRITORY OF UTAH,
Plaintiff,
v.
JACK MOORE and LARS THOMPSON, Defendants. } Motion for a New Trial for Lars Thompson.

Comes now the defendant Lars Thompson and moves the court to vacate and set aside the verdict of the jury and to grant a new trial of this cause, upon the following grounds, to wit:

1.

Errors of law occurring at the trial and excepted to by the defendant.

2.

The evidence is insufficient to justify the verdict.

3.

That the defendant has not had a trial by a jury, as provided by law, and more particularly because—

First. At the time the alleged offense is charged to have been committed a lawful jury was composed of twelve jurors and no less number.

Second. That the time the indictment was found and returned by the grand jury a trial jury was composed, by law, of twelve jurors and no less number.

Third. The pretended jury by which the defendant was tried, on the 26th day of May, 1897, consisted of eight persons or jurors and no more.

J. W. N. WHITECOTTON,
Attorney for Defendant Lars Thompson.

Overruling Motion.

Said motion was overruled by the court; to which ruling the defendant duly excepted.

7½

THE STATE OF UTAH
v.
LARS THOMPSON.

In this cause J. W. N. Whitecotten, Esq., moves the court to vacate and set aside the verdict of the jury and grant a new trial upon the following grounds, to wit:

1. Errors of law occurring at the trial and excepted to by the defendant.

2. That the defendant has not had a trial by a jury at all, as provided by law.

Said motion was overruled by the court; to which ruling the defendant duly excepted.

STATE OF UTAH,
County of Emery, } ss:

—, O. J. Sitterud, county clerk in and for the county of Emery State of Utah, do hereby certify that the foregoing is a full, true, and correct copy of the original order overruling the motion for a new trial in the above-entitled cause on the 27th day of May, A. D. 1897, as appears of record in my office, in Castle Dale, Utah.

In witness whereof I have hereunto set my hand and affixed my official seal this 29th day of June, A. D. 1897.

O. J. SITTERUD,
[SEAL.] *County Clerk and ex Officio Clerk 7th Jud. Dist. Court of Utah in and for Emery County.*

8 At a stated term of the district court for the seventh judicial district of the State of Utah, held at the court-room of said court, at Castle Dale, in and for Emery county and State of Utah, on the 27th day of May, A. D. 1897.

Present: The Hon. Jacob Johnson, judge.

THE STATE OF UTAH
v.
LARS THOMPSON. } Judgment on Conviction for Grand Larceny.

Defendant being present in court and ready for sentence, thereupon the court renders its judgment:

That whereas the said defendant, Lars Thompson, having been convicted in this court of the crime of grand larceny, it is therefore ordered, adjudged, and decreed that the said Lars Thompson be imprisoned in the State prison of the State of Utah for the term of three years.

You, said defendant, Lars Thompson, are rendered into the custody of the sheriff of Emery county, State of Utah, to be by him delivered into the custody of the warden or other proper officer of said State prison.

JACOB JOHNSON, *Judge.*

9 In the District Court of the Seventh Judicial District of the State of Utah in and for the County of Emery.

THE PEOPLE OF THE TERRITORY OF UTAH,
Plaintiff,
v.
JACK MOORE and LARS THOMPSON, Defendants. } Bill of Exceptions.

This cause was commenced in the second district court of the Territory of Utah by an indictment returned by the grand jury of that district in the month of May, 1895, charging the defendants with grand larceny by stealing a certain calf, the property of Heber Wilson, in Wayne county, on the second day of March 1895.

Upon this indictment a trial was had at Beaver city, in said district court, in the month of November, 1895, by a jury of twelve men, and the defendants were both found guilty, and the court subsequently set aside the verdict of the jury and granted a new trial.

The case on the incoming of statehood was duly transferred from the second district court of the Territory to the sixth district court of the State for Wayne county, and in the month of April, 1897, a change of venue was granted on defendants' motion to the seventh district court for Emery county.

10 On the 26th day of May, 1897, the State appearing by Messrs. Samuel A. King, Bean, Rapp and Eckersley, and the defendant Lars Thompson appearing by his counsel, W. K. Reid and J. W. N. Whitecotton, the defendant Lars Thompson was tried

in the said seventh district court, Hon. Jacob Johnson, district judge, presiding, by a jury consisting of eight jurors only, and the said eight jurors returned a verdict of guilty of grand larceny against him as charged in the indictment.

On the 27th day of May, 1897, the said defendant, Lars Thompson, being called for sentence, by his counsel moved the court to set aside and vacate the verdict and grant a new trial of said cause, on the ground, among others, that the defendant had not had a trial of his case by a jury as provided by law, and more particularly because:

1. At the time the alleged offense is charged to have been committed a lawful jury was composed of twelve jurors and no less number.

2. That at the time the indictment was found and returned by the grand jury a trial jury was composed by law of twelve jurors and no less number.

3. The jury by which the defendant was tried on the 26th day of May, 1897, consisted of eight persons or jurors and no more.

Which said motion was by the court overruled; to which the defendant Lars Thompson duly excepted. The court thereupon passed judgment upon the defendant that he be imprisoned in the State prison of the State of Utah for the period of three years; to which the defendant duly excepted.

The foregoing is defendant Lars Thompson's proposed bill of exceptions to be used on the appeal of said cause to the supreme court of the State of Utah.

J. W. N. WHITECOTTON,
Attorney for Lars Thompson.

It is now hereby agreed that the foregoing bill of exceptions is correct and the same may be settled and allowed.

SAMUEL A. KING,
11 *Of Counsel for the State.*

June 2nd, 1897.

The foregoing bill of exceptions, being correct, is hereby settled and allowed.

June 4th, 1897.

JACOB JOHNSON,
District Judge.

Title of Court and Cause.

To the State of Utah and to Messrs. Samuel A. King, Eckersley, Bean and Rapp, attorneys for the State, and O. J. Sitterud, clerk of the seventh district court of Utah in and for Emery county:

You will take notice that the defendant Lars Thompson hereby appeals to the supreme court of the State of Utah from the order of the trial court overruling defendant's motion for a new trial, and

from the judgment of said court in passing and imposing upon the defendant that he be confined in the State prison of the State of Utah for the period of three years.

J. W. N. WHITECOTTON,
Attorney for Defendant, Lars Thompson.

12 STATE OF UTAH, } ss:
County of Emery, }

I, the undersigned, do hereby certify that the foregoing are true and correct copies of original papers, indictment, verdict of first jury, order of court granting new trial, order of court transferring case to Wayne county, order of court granting change of venue to Emery county, verdict of jury in last trial, motion for new trial, order of court overruling motion, judgment, bill of exceptions, and notice of appeal in the case "The People, etc., *v.* Jack Moore and Lars Thompson" as they appear on file at my office, in Castle Dale, Utah.

In witness whereof I have hereunto set my hand and seal this 15th day of June, A. D. 1897.

[SEAL.] O. J. SITTERUD,
County Clerk and ex Officio District Clerk of the Seventh District Court of Utah in and for Emery County.

Endorsed: In the district court, seventh judicial district, State of Utah, county of Emery. The State *v.* Lars Thompson.

Endorsed: In the supreme court of the State of Utah. Lars Thompson, appellant, *v.* The State of Utah, respondent. Filed July 3rd, 1897. L. P. Palmer, clerk supreme court of Utah.

13 In the Supreme Court of the State of Utah. Regular September Term, September 13, 1897.

STATE OF UTAH, Respondent, }
v. } Submission.
LARS THOMPSON, Appellant. }

This cause, coming on regularly for hearing, was argued by J. W. N. Whitecotton, Esq., in behalf of the appellant; by Benner X. Smith, ass't att'y general, in reply, was submitted, and by the court taken under advisement (Bartch, J., sitting by request).

SEPTEMBER 27TH, 1897.

Title of Court and Cause.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the lower court be, and the same is hereby, affirmed.

14 In the Supreme Court of the State of Utah.

THE STATE OF UTAH, Respondent,
v.
LARS THOMPSON, Appellant.

MINER, *J.*:

The appellant Thompson was indicted for the crime of grand larceny in May, 1895. He was tried in Emery county in May, 1897, before a jury consisting of eight persons duly chosen and qualified, found guilty and sentenced to imprisonment in the penitentiary. When called upon for sentence his counsel moved to vacate and set aside the verdict on the ground that the defendant had been tried before eight jurors, when the law in force at the time of the alleged commission of the offense provided that the defendant should be tried by twelve jurors; that the alleged conviction was in violation of the provisions of the Constitution of the United States guaranteeing due process of law, and that the constitution and laws of Utah providing for trials in criminal cases, not capital, by a jury of eight persons were, as to the offense committed prior to the admission of the State into the Union, in violation of sec. 10, article 1, of the Constitution of the United States.

15 The motion was overruled and the defendant appealed to this court.

The questions involved in this appeal were fully passed upon by the court in the case of The State *v.* Bates, 47 Pac. Rep., 78, — 14 Utah, —. That case is decisive of this.

We find no error in the record. The judgment of the district court is affirmed.

We concur:
ZANE, *C. J.*
BARTCH, *J.*

Endorsed: State of Utah *v.* Lars Thompson. Opinion. Filed September 27, 1897. Lilburn P. Palmer, clerk supreme court, Utah.

16 In the Supreme Court of the United States.

LARS THOMPSON, Plaintiff in Error,
vs.
THE STATE OF UTAH, Defendant in Error.
Petition for Writ of Error.

Comes now Lars Thompson, the plaintiff herein, and respectfully shows to the court:

I. That in the month of May, 1895, in the second judicial district court of the Territory of Utah, he, in connection with one Jack Moore, was indicted by the grand jury of said court for the crime of grand larceny, in said indictment alleged to have been

committed in Wayne county, within said judicial district, in the month of March, 1895.

II. That he was thereafter, to wit, in the month of November, 1895, duly tried in said court by a jury composed of twelve persons and convicted of grand larceny, as charged in said indictment, and upon his motion therefor the verdict of the jury was set aside and a new trial ordered.

III. That in the month of May, 1897, he was again tried in the district court of the seventh judicial district in and for Emery county on a change of venue upon the same indictment by a jury composed of eight persons only, and by said jury convicted of the crime of grand larceny, and on the 26th day of said month of May, 1897, being called for sentence, thereupon moved the court to vacate and set aside the verdict of the jury in his case and to grant a new trial thereof on the following grounds, to wit, that he, the defendant, had not had a trial of his case by a jury as provided by
17 law, and more particularly because:

1. At the time the alleged offense is charged to have been committed a lawful jury was composed of twelve jurors and no less number.

2. That at the time the indictment was found and returned by the grand jury a trial jury was composed by law of twelve jurors and no less number.

3. The jury by which the defendant was tried on the 26th day of May, 1897, consisted of eight jurors and no more.

Which motion was overruled by the court; to which the defendant duly excepted.

IV. That the court thereupon passed judgment upon defendant, plaintiff herein, that he be imprisoned in the State prison of the State of Utah for a period of three years; to which defendant duly excepted.

V. That from said judgment of said district court the plaintiff herein appealed to the supreme court of the State of Utah, and the said supreme court on the 27th day of September, 1897, rendered its judgment on said appeal, affirming the judgment of the trial court.

In the supreme court of the State of Utah the appellant there, plaintiff herein, claimed that the judgment against him was illegal because section ten of article one — the constitution of the State of Utah, limiting a jury to eight persons in the trial of causes of felony arising before Utah became a State, and especially as to his case, is *ex post facto* and void and in contravention of subdivision one, section X, of article I of the Constitution of the United States, and in contravention also of section one of article XIV of the amendments to the Constitution of the United States, which prohibits a State from depriving any person of life, liberty, or property
18 without due process of law, and in his appeal to the supreme court made no other contention.

VI. The said supreme court, in deciding said cause, expressly held that said constitution of the State of Utah and the laws passed thereunder were valid and not in contravention of the Constitution

of the United States, as claimed by appellant there, plaintiff herein, and passed upon no other question.

In this judgment of the supreme court of the State of Utah this plaintiff is by his counsel advised and verily believes, and therefore states, that error was committed to his great detriment and injury, which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays—

That a writ of error may issue in this behalf to the supreme court of the State of Utah for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated November 24th, 1897.

LARS THOMPSON,
By J. W. N. WHITECOTTON,
His Attorney.

Attorney's address: Provo, Utah.

Filed Nov. 24, 1897.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

19 UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law of the said State in which a decision could be had in the said cause between The State of Utah and Lars Thompson, wherein was drawn in question the validity of the constitution and laws of the State of Utah and an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Lars Thompson, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-third day of January, 1898, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24th day of November, 1897.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District Utah.

Allowed by—
CHARLES S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Filed Nov. 24, 1897.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

20 In the Supreme Court of the United States.

In the Matter of the Petition of LARS THOMPSON for a Writ of Error to the Supreme Court of the State of Utah.

Assignment of Errors.

Comes now Lars Thompson, petitioner for a writ of error to the supreme court of the State of Utah, by J. W. N. Whitecotton, his attorney, and says that the said supreme court of the State of Utah in rendering its decision and judgment in this cause erred in the following particulars, to wit:

1. The said court erred in upholding the validity of section ten of article one of the constitution and laws of the State of Utah, providing that a jury for the trial of felonies alleged to have been committed while Utah was a Territory and before said State constitution and laws had any existence should be composed of eight persons only in cases not capital.

2. The said court erred in deciding that said State constitution and laws are not *ex post facto* and not in contravention of subdivision one of section ten of article one of the Constitution of the United States with reference to offenses committed while Utah was a Territory, and a trial jury consisted of twelve men and no less number.

3. The said supreme court erred in deciding that the judgment against the plaintiff herein was by due process of law.

4. The said supreme court erred in affirming the judgment of the district court in said cause for each and all the reasons above
21 set forth, and for the further reason that the plaintiff herein has never been tried by a jury at all.

J. W. N. WHITECOTTON,
Attorney for Plaintiff in Error.

22 UNITED STATES OF AMERICA, *ss:*

To the State of Utah, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty

days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, at Salt Lake City, wherein Lars Thompson is plaintiff in error and The State of Utah is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles S. Zane, chief justice of the supreme court of the State of Utah, this 24th day of November, 1897.

(Signed) CHARLES S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Received a copy of the above this 26th day of November, 1897.

A. C. BISHOP,
Attorney General.

Filed Nov. 24, 1897.

LILBURN P. PALMER,
Clerk Supreme Court Utah.

23 UNITED STATES OF AMERICA:

STATE OF UTAH, } ss:
County of Salt Lake, }

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, in pursuance of the attached writ of error, allowed in the case wherein Lars Thompson is plaintiff in error and The State of Utah is defendant in error, do return attached hereto a transcript of the record and proceedings and copy of opinion, together with the original citation, writ, and assignment of errors, all in and of said court and cause; and I hereby certify that said attached transcript of said record and proceedings and opinion are full, true, and correct copies of the several originals thereof on file or of record in my office.

Seal Supreme Court, State of Utah, Jan. 4, 1896.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of the State of Utah this 29th day of November, 1897.

L. P. PALMER,
Clerk Supreme Court of Utah,
By H. W. GRIFFITH,
Deputy Clerk.

Endorsed on cover: Case No. 16,766. Utah supreme court. Term No., 553. Lars Thompson, plaintiff in error, *vs.* The State of Utah. Filed December 28th, 1897.